

Mona L. Burton (5399)  
Sherilyn A. Olsen (9418)  
HOLLAND & HART LLP  
60 E. South Temple, Suite 2000  
Salt Lake City, Utah 84111-1031  
Telephone: (801) 799-5800  
Facsimile: (801) 799-5700  
*Attorneys for Darth Family Fund*

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH**

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In re:

JACKALOPE ESTATES, LLC

Debtors.

Case No. 09-10000 RKM  
(Chapter 11)

[Electronically Filed]

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**MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

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The Darth Family Fund (“**Darth**”) submits its Motion for Relief from the Automatic Stay, as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Debtor’s bankruptcy case and bankruptcy estate under 28 U.S.C. § 1334 and § 157. Venue is proper in the United States Bankruptcy Court for the District of Utah.

2. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(G).

### FACTUAL ALLEGATIONS

3. The Debtor filed its voluntary petition on June 15, 2009, the day prior to a scheduled foreclosure sale by Darth. No trustee has been appointed, and the Debtor is operating as a debtor-in-possession.

4. The debtor owns the Jackalope Estates, a 25 acre real estate development located on the outskirts of Grantsville, Utah (“**Jackalope**”).

5. On information and belief, the Debtor purchased Jackalope for \$2,000,000 in 2006. The purchase of the property was financed with a \$1,500,000 loan from Texas American Republic People’s Bank (“**TARP Bank**”), secured by a deed of trust against Jackalope.

6. In July of 2008, the Debtor borrowed \$3,500,000 from Darth for the purpose of providing funding for the completion of the development of Jackalope. Darth’s loan is secured by a lien against Jackalope reflected by a deed of trust recorded with the Tooele County, Utah recorder’s office on July 15, 2008.

7. The Darth loan provided for interest only payments beginning August 15, 2008, with the loan maturing on January 15, 2008, at which time all unpaid principal and interest became due and payable.

8. On information and belief, the Debtor was in default to TARP Bank on the date of the bankruptcy filing, as evidenced by a Notice of Default recorded by TARP Bank with the Tooele County, Utah Recorder on June 1, 2009. The amount owed to TARP Bank as of the date of the bankruptcy filing was no less than \$1,500,000.

9. As of the date of the Debtor's bankruptcy filing, the Debtor owed Darth the sum of \$3,800,000, consisting of \$3,500,000 in principal, \$250,000 in interest at the default rate from January 16, 2009 to the date of the bankruptcy filing, plus late charges and appraisal fees of \$10,000, and attorneys fees of \$40,000.

10. In addition, the Debtor has failed to pay contractors and suppliers for work and materials supplied to Jackalope, and mechanics liens have and are being filed against the property. Specifically, Paul's Paving has filed a mechanics lien in the amount of \$500,000 based on its provision of asphalt and cement to the development of Jackalope and for which it has not been paid.

11. There is no equity in the property. The property is worth no more than \$5,000,000 as evidenced by an appraisal obtained by Darth immediately after the bankruptcy filing.

12. The property is not necessary to an effective reorganization of Jackalope. The appraised value of the property is \$5,000,000, an amount insufficient to even pay the liens against the property, with no equity available for unsecured creditors of the estate.

### ARGUMENT

Determination of the merits of a motion for relief from stay is governed by § 362(d) of the Bankruptcy Code which provides:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay---

(1) for cause, including lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization.

Jackalope does not have equity in the real property. All liens, including those senior and junior to Darth's, are to be considered in determining whether Jackalope has equity in the property. *In re Indian Palms Assocs., Ltd.*, 61 F.3d 197 (3<sup>rd</sup> Cir. 1995). As evidenced by Darth's recent appraisal showing the property is worth \$5,000,000, it is evident that the value of the property is less than amount of the liens against the property. TARP Bank's first-priority lien secures \$1,500,000; Darth's second priority lien secures \$3,800,000, and Paul's Paving asserts a mechanics' lien in the amount of \$500,000. Therefore, the debtor does not have equity in the property.

The property is not necessary to an effective reorganization of Jackalope. For property to be necessary for an effective reorganization, there must be a reasonable possibility of a successful reorganization within a reasonable time. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.* 484 U.S. 365 (1988).

In this case, the property is not necessary to an effective reorganization of Jackalope. Jackalope is seeking to sell the property for *less* than the liens existing against it. The result will be deficiency claims against the Debtor, a result which is no different than would exist if Darth goes forward with its trustee's sale.

Wherefore, Darth respectfully requests this Court enter an order granting it relief from the automatic stay of § 362 of the Bankruptcy Code, authorizing Darth to exercise its remedies against the property.

Dated: July 1, 2009.

HOLLAND & HART LLP

By: /s/ Mona L. Burton  
Mona L. Burton  
Sherilyn A. Olsen  
*Counsel for Darth Family Fund*

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